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SUBJECT: ICC PROSECUTOR STRESSES IMPORTANCE OF
MARGINALIZING INDICTEES

¶1. Summary: In his December 4 briefing to the Security Council, International Criminal Court (ICC) Prosecutor Moreno-Ocampo discussed positive and negative developments in the cases being pursued under UNSCR 1593, which referred the conflict in Darfur to the ICC. Ocampo characterized as positive the voluntary appearance of rebel leader Abu Garda at the Hague; cooperation between regional organizations and the ICC, and support from States for execution of the ICC arrest warrants. Ocampo said that negative developments included the Government of Sudan's (GoS) refusal to cooperate with the Court and continuation of crimes in Darfur. Council members broadly discussed these issues. A complete transcript of the proceedings can be found at <http://www.un.org/Depts/dhl/resguide/scact2009.htm>. End Summary.

Positive Developments

¶2. Ocampo began his December 4 meeting by discussing three positive developments. He noted the voluntary appearance of one of the defendants, Bahr Idriss Abu Garda, in the case involving a rebel attack on peacekeepers in Haskanita. Ocampo also discussed ICC cooperation with regional institutions, including particularly the African Union High-Level Panel on Darfur (AUPD). Ocampo said that the ICC would continue to cooperate with the AUPD. He noted that the AUPD listed three prerequisites that the GoS would need to meet: removing official immunities; adopting special measures for crimes involving sex and gender based violence (SGBV); and ensuring protection of witnesses.

¶3. Ocampo also discussed cooperation of States with the ICC, including for the execution of arrest warrants. He listed states and regional organizations that had publicly expressed support for the ICC, and pointed out that President Bashir has not been able to travel to high-level international events because of his status as an indicted war criminal. Ocampo stressed that continued marginalization of indictees could lead to ultimate implementation of arrest warrants.

Negative Developments

¶4. Ocampo catalogued the GoS's lack of cooperation with the ICC, including Bashir's refusal to appear in Court or to appoint a lawyer, as well as the GoS failure to arrest indictees Ali Kushayb and Ahmad Harun. Ocampo stated that Bashir had attempted to shift international attention away from crimes committed in Darfur to the conflict in the South. Ocampo also stated that crimes are continuing, including indiscriminate bombing of civilians, forced displacement; hindering humanitarian aid; SGBV and use of child soldiers. Ocampo pointed to reports of militia/janjaweed attacks against villages in North Darfur as recently as November 25.

P-5 Views

15. Ambassador DiCarlo acknowledged some progress, including cooperation with the ICC by certain states and regional organizations. However, she stressed that the GoS had failed to fulfill its obligation to cooperate with the ICC under UNSCR 1593. DiCarlo noted that continued violence in Darfur undermined the fragile humanitarian situation, and said that the GoS must be held responsible for meeting its people's humanitarian needs. She expressed support for the AUPD recommendation to strengthen Sudan's legal system, but noted this would not succeed without the political will to bring perpetrators to justice.

16. The United Kingdom praised the AUPD report as detailed and balanced, but still expressed strong support for the ICC. France also expressed strong support for the ICC. Both the UK and France, along with Russia, stated that the GoS had failed to comply with its obligation under UNSCR 1593 to cooperate with the ICC. Russia noted that Ocampo should calibrate his actions so that peace could be achieved, stressing the primacy of reaching a political settlement to end the conflict in Darfur. China emphasized that justice was only one element in a complex equation of problems faced by Sudan.

African Council Members' Views -----

17. Uganda welcomed the AUPD recommendation for a hybrid court and urged the GoS to establish such a court. Uganda stressed that the Darfur conflict must be resolved in a way that avoids anarchy, and the Mbeki panel had taken into account the unique circumstances of Darfur, Sudan and Africa.

USUN NEW Y 00001103 002 OF 002

Uganda called on the Security Council to support the recommendations of the AUPD.

18. Libya said that Council members who support the ICC in the Sudan context oppose the ICC in the context of the Goldstone Report. Libya argued that the ICC was a tool for certain countries to achieve their policies. Libya also stated that because Sudan is not a party to the Rome Statute, it has no obligation to cooperate with the ICC. Libya reiterated its call for Article 16 deferral of the indictment against Bashir, and observed that the AU Peace and Security Council, when it endorsed the AUPD report, again called for Article 16 deferral.

19. Burkina Faso expressed concern over the impact of the arrest warrant against Bashir, noting that justice cannot bring peace without a consensual political solution. Burkina Faso said that issuing an arrest warrant against Bashir would complicate peace efforts and that the Council needs to give the peace process an opportunity to succeed.
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